

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NICOLE VERGARA and BELLA 77 CORP.

Plaintiffs,

-against-

21-CV-06667-KAM-ST

**ANSWER TO FIRST
AMENDED COMPLAINT**

TOWN OF BABYLON, NY, TIMOTHY BESEMER,
Individually and in his official capacity as Chief Building
Inspector of the Town of Babylon; ELIZABETH WHITE,
individually and in her official capacity as Deputy
Commissioner, Planning and Development, Building Division,
Of the Town of Babylon; RACHEL SCELFO, individually and
In her official capacity as Commissioner, Planning & Development,
Building Division, of the Town of Babylon; JOSPEH WILSON,
individually and in his official capacity as Town Attorney of the
Town of Babylon; and JERRY GUARINO, individually and in
his official capacity as an Assistant Town Attorney of the Town
of Babylon; John and Jane Does 1-10,

Defendants.

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Defendants, TOWN OF BABYLON, TIMOTHY BESEMER, ELIZABETH WHITE,
RACHEL SCELFO, JOSEPH WILSON and JERRY GUARINO (“defendants”), by their attorney,
WILLIAM D. WEXLER, ESQ., respectfully submits this Answer to plaintiffs’ First Amended
Complaint (“Complaint”) in the above-captioned actions as follows:

PRELIMINARY STATEMENT

1. Defendants deny each and every allegation set forth in paragraphs numbered “1”, “2”, “6”, “8”, “9”, “10”, “11” and “15” of the Complaint.
2. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraphs “3”, “4”, “5”, “7”, “12”, “13” and “14”.

PARTIES

3. Defendants admit the allegations set forth in paragraphs “16”, “17”, “18”, 19”, “20”, “21”, “23” and “24” of the Complaint.

4. Defendants deny each and every allegation set forth in paragraph “22” of the Complaint.

JURISDICTION AND VENUE

5. Defendants admit the allegations set forth in paragraphs “25”, “26”, “27” and “28” of the Complaint.

FACTUAL ALLEGATIONS

6. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraphs “29”, “30”, “32”, “33”, “34”, “35”, “36”, “37”, “43”, “57”, “75”, “89”, “92”, “101”, “102”, “103”, “104”, “106”, “107”, “109”, “110” and “117” of the Complaint.

7. Defendants admit the allegations set forth in paragraphs “31”, “38”, “39”, “40”, “41”, “44”, “46”, “49”, “50”, “51”, “52”, “54”, “55”, “56”, “58”, “59”, “60”, “61”, “62”, “63”, “64”, “65”, “66”, “67”, “70”, “71”, “72”, “73”, “74”, “78”, “79”, “80”, “81”, “82”, “83”, “84”, “85”, “86”, “87”, “88”, “90”, “91”, “93”, “94”, “95”, “96”, “97”, “98”, “99”, “100” and “108” of the Complaint.

8. Defendants deny each and every allegation set forth in paragraphs “42”, “45”, “47”, “48”, “53”, “68”, “69”, “76”, “77”, “105”, “111”, “112”, “113”, “114”, “115”, “116”, “118”, “119”, “120”, “121”, “122” and “123” of the Complaint.

HYPOTHETICALS AND COMPARATORS

9. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraphs “124”, “125”, “126”, “127”, “128”, “130”, “131”, “132”, “133”, “134”, “135”, “136”, “137”, “138”, “139”, “140”, “141”, “142”, “143”, “144”, “145”, “146”, “147”, “148”, “149”, “150”, “151”, “152”, “153” and “154” of the Complaint.

10. Defendants admit the allegations set forth in paragraph “129” of the Complaint.

11. Defendants deny each and every allegation set forth in paragraphs “155”, “156”, and “157” of the Complaint.

FIRST CAUSE OF ACTION

12. Defendants admit the allegations set forth in paragraphs “158”, “159” and “163” of the Complaint.

13. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraphs “160” and “161” of the Complaint.

14. Defendants deny each and every allegation set forth in paragraphs “162”, “164”, “165”, “166”, “167”, “168” and “169” of the Complaint.

SECOND CAUSE OF ACTION

15. Defendants deny each and every allegation set forth in paragraphs “170”, “171”, “172”, “173”, “174”, “175”, “176”, “177”, “178”, “179”, “180”, “181”, “189”, “190”, “191”, “192”, “193” and “194” of the Complaint.

16. Defendants admit the allegations set forth in paragraphs “182”, “183”, “184” and “185” of the Complaint.

17. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraphs “186”, “187” and “188” of the Complaint.

THIRD CAUSE OF ACTION

18. Defendants admit the allegations set forth in paragraph “195” of the Complaint.

19. Defendants deny each and every allegation set forth in paragraphs “196”, “197”, “198”, “199”, “200”, “201”, “202”, “203”, “204”, “205”, “207”, “208” and “210” of the Complaint.

20. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraphs “206” and “209” of the Complaint.

FOURTH CAUSE OF ACTION

21. Defendants admit the allegations set forth in paragraph “211” of the Complaint.

22. Defendants deny each and every allegation set forth in paragraphs “212”, and “213” of the Complaint.

FIFTH CAUSE OF ACTION

23. Defendants admit the allegations set forth in paragraphs “214” and “215” of the Complaint.

24. Defendants deny each and every allegation set forth in paragraphs “216”, “217” and “220” of the Complaint.

25. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraphs “218”, “219” and “221” of the Complaint.

SIXTH CAUSE OF ACTION

26. Defendants admit the allegations set forth in paragraphs “222”, “223”, “224” and “225” of the Complaint.

27. Defendants deny each and every allegation set forth in paragraphs “226”, “227”, “228”, “229”, “230”, “231” and “232” of the Complaint.

SEVENTH CAUSE OF ACTION

28. Defendants admit the allegations set forth in paragraphs “233”, “234”, “235”, “239”, “240” and “244” of the Complaint.

29. Defendants deny knowledge and information sufficient to a belief as to the truth of the allegations set forth in paragraphs “236”, “241”, “243”, “245”, “246”, “247” and “248” of the Complaint.

30. Defendants deny each and every allegation set forth in paragraphs “237”, “238”, “242”, “249”, “250”, “251”, “252”, “253”, “254” and “255” of the Complaint.

EIGHTH CAUSE OF ACTION

31. Defendants admit the allegations set forth in paragraph “256” of the Complaint.

32. Defendants deny each and every allegation set forth in paragraphs “257”, “258”, “259”, “260”, “261”, “262” and “263” of the Complaint.

NINTH CAUSE OF ACTION

33. Defendants admit the allegations set forth in paragraphs “264”, “265”, “266”, “267”, “269”, “272”, “277”, “278”, “279”, “280” and “281” of the Complaint.

34. Defendants deny each and every allegation set forth in paragraphs “268”, “282”, “283” and “284” of the Complaint.

35. Defendants deny knowledge and information sufficient to a belief as to the truth of the allegations set forth in paragraphs “270”, “271”, “273”, “274”, “275” and “276” of the Complaint.

TENTH CAUSE OF ACTION

36. Defendants admit the allegations set forth in paragraphs “285”, “286”, “287”, “288”, “289”, “290”, “302” and “305” of the Complaint.

37. Defendants deny each and every allegation set forth in paragraphs “291”, “292”, “293”, “294”, “295”, “296”, “297”, “298”, “299”, “300”, “301”, “303”, “310”, “311”, “312” and “313” of the Complaint.

38. Defendants deny knowledge and information sufficient to a belief as to the truth of the allegations set forth in paragraphs “304”, “306”, “307”, “308” and “309” of the Complaint.

ELEVENTH CAUSE OF ACTION

39. Defendants admit the allegations set forth in paragraphs “314” and “315” of the Complaint.

40. Defendants deny each and every allegation set forth in paragraphs “316”, “317”, “318”, “319”, “320”, “321”, “322”, “323”, “324”, “325”, “326”, “327” and “328” of the Complaint.

TWELFTH CAUSE OF ACTION

41. Defendants admit the allegations set forth in paragraphs “329”, “331”, “332”, “333” and “335” of the Complaint.

42. Defendants deny knowledge and information sufficient to a belief as to the truth of the allegations set forth in paragraph “330” of the Complaint.

43. Defendants deny each and every allegation set forth in paragraphs “334”, “336” and “337” of the Complaint.

PRAYER FOR RELIEF

44. Defendants deny each and every allegation set forth in the “WHEREFORE” clause of the Complaint and, further, denies that plaintiffs are entitled to the remedies or relief sought therein.

AFFIRMATIVE DEFENSES

45. Defendants assert that they bear the burden of proof only on those matters set forth as affirmative defenses in Rule 8(c) of the Federal Rules of Civil Procedure. Defendants set forth their affirmative defenses to plaintiffs' claims as follows:

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

46. The Complaint fails to state a claim upon which relief may be granted or upon which the damages sought can be awarded.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

47. Plaintiffs are estopped and barred by their own conduct from recovering any relief.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

48. Plaintiffs' constitutional and/or statutory rights have not been violated by the answering defendants herein.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

49. Plaintiffs lack a property or other protected interests in the matters for which they have claimed a constitutional deprivation or civil rights violation.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

50. That at all the times herein mentioned and mentioned in the Complaint, the defendants having anything to do with the plaintiffs were in the performance of their respective duties as agents, servants and/or employees of the TOWN OF BABYLON; that all of the acts of the defendants in connection with the plaintiffs were performed in good faith, without malice and with reasonable and proper cause in the ordinary course of their duties as agents, servants and/or employees of the TOWN OF BABYLON and as required by them and each of them by reason of the conduct of the plaintiffs.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

51. The defendants' actions were not unreasonable in character and were the product of discretionary state action and thus not subject to suit.

RESERVATION OF RIGHTS

52. The defendants reserve all rights to amend this pleading and to assert such additional affirmative defenses and counterclaims/crossclaims as may exist pending further investigation and discovery.

WHEREFORE, defendants demand judgment against the plaintiffs dismissing the complaint, together with the costs, disbursements and reasonable attorneys' fees of this action, and for such other and further relief as this Court deems just and proper.

Dated: North Babylon, New York
March 15, 2022

/s/

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